

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, : Criminal Action
: No. 11-cr-424
Plaintiff :
: March 9, 2012
-against- : 2:18 p.m.
:
:
JAMES ROSEMOND, et al., : Brooklyn, New York
:
Defendants. :
.....:

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JOHN GLEESON
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

For the Government: LORETTA LYNCH, United States Attorney
Eastern District of New York
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Assistant United States Attorneys

For the Defendant: GERALD L. SHARGEL, Esq.
(James Rosemond)

For the Defendant: BENNETT M. EPSTEIN (via telephone)
(Jason Williams)

For the Defendant: EDWARD PANZER, Esq.
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1 THE COURTROOM DEPUTY: United States versus Rosemond,
2 et al.

3 THE COURT: Good afternoon. You can be seated in the
4 back.

5 MR. PANZER: Nice to see you, Your Honor.

6 THE COURT: Nice to be seen. Nice to see you,
7 Mr. Panzer.

8 MR. PANZER: Edward Panzer and George Santangelo for
9 Mr. Darron Lemont Bennett.

10 MR. SHARGEL: Gerald Shargel for Mr. Rosemond. Good
11 afternoon.

12 MR. KAMINSKY: Todd Kaminsky and Carolyn Pokorny for
13 the United States. Good afternoon, Your Honor.

14 THE COURT: Good afternoon. Who is on the phone?
15 Mr. Epstein, you there?

16 MR. EPSTEIN: Yes, I can hear you.

17 THE COURT: Okay. What can I do for you?

18 MR. PANZER: I think we have a trial date set. And
19 I've spoken to Mr. Shargel, and he seems to think that he can
20 make that trial date.

21 MR. SHARGEL: Well, I'm here. Let me report.

22 I sent the letter that gave rise to this conference. I
23 set forth my trial schedule, but I came to realize that if the
24 case is not tried in May, I won't be available until December or
25 January. And I know that that doesn't make a whole lot of sense

1 for anyone, at least if it can be avoided. In thinking about it
2 and in going over it, I know there's a fair amount of discovery,
3 but I can do it. The one caveat --

4 THE COURT: What's that caveat? What's our date again?

5 MR. SHARGEL: May 24th. The case before Judge Townes
6 that I referenced in my letter is scheduled to begin on June the
7 4th.

8 THE COURT: Right.

9 MR. SHARGEL: And it may be that we'd be finishing up
10 this case so I'd have to respectfully ask Your Honor if you
11 would impose upon Judge Townes, and I know she's set on that
12 date, but if it's a three-month trial, it seems like there could
13 be some wiggle room. But I don't want to overstep my bounds. I
14 was hoping if I can elicit the aid of Your Honor to ask Judge
15 Townes to put it off.

16 THE COURT: A three-month trial is a reference to the
17 one in front of her?

18 MR. SHARGEL: Yes. In other words, the government's
19 estimated a three-week trial. If we start on May 21st, I think
20 it's two weeks. I don't have a calendar, but I think it's two
21 weeks to June 4th. So I might need to enlist your help.

22 THE COURT: I got it. I'll do what I can. If history
23 repeats it itself, a three-week trial never lasts longer than
24 three weeks.

25 Do you think it would be three, four weeks?

1 MR. KAMINSKY: Your Honor, there are a little more than
2 a half dozen cooperating witnesses, as well as numerous agents
3 who conducted various searches on both coasts and different
4 firearms and things. So I think three weeks is a conservative
5 estimate but realistic as well.

6 THE COURT: Okay.

7 MR. EPSTEIN: Judge, may I be heard?

8 THE COURT: In a minute.

9 MS. POKORNY: The problem is the government couldn't do
10 the trial then. First of all, I have a preplanned, already paid
11 for, trip out of the country the week of May 28th so that takes
12 me out. We're the only two government lawyers in the case, and
13 we are both actually engaged in trial starting next week that is
14 lasting at least until mid-April. So there's just no way we can
15 respond to the motions. We would have to completely restaff the
16 case.

17 I appreciate defense counsel's schedules and the
18 difficulty, but I'm just hoping we can work together and find
19 out something mutually agreeable. Even if we push this back a
20 few weeks for us, that would give us the room that we needed to
21 staff it properly.

22 MR. PANZER: Judge, my client is in jail. He's been in
23 jail for a long time. The government will not consent to any
24 bail as to each defendant. I think we're entitled to our trial
25 the way Your Honor set it.

1 THE COURT: Mr. Epstein, you said you wanted to be
2 heard?

3 MR. EPSTEIN: Yes, Your Honor. I'm new to the case. I
4 haven't received any discovery yet. I have a trial scheduled to
5 start May 14th so if the trial is going to go ahead as
6 Mr. Shargel desires, I'm going to need to be severed.

7 THE COURT: Okay. Anyone else want to be heard?

8 MR. KAMINSKY: Your Honor, only to the point -- and I
9 don't know if this is relevant yet, but perhaps you'll find this
10 helpful or not, but the evidence against each defendant before
11 you is overlapping and the same witnesses will be testifying.
12 In fact, for Mr. Bennett there are almost no witnesses that will
13 provide evidence against him that also aren't the main witnesses
14 against Mr. Rosemond.

15 MR. PANZER: That would be a reason to have it quicker.

16 THE COURT: It doesn't give me any pleasure to set a
17 schedule that requires the government, or any side, to adapt by
18 getting substitute counsel, but this is a jail case and
19 that's -- it's ten weeks away. That's a lot of time. I
20 understand that you and Ms. Pokorny are otherwise engaged, but
21 that happens.

22 MS. POKORNY: It does happen, Judge.

23 THE COURT: These people are detained pending trial.

24 MS. POKORNY: It does happen, Judge, but maybe it
25 happens in a courier case where it's very simple; not in a case

1 against a continuing criminal enterprise. And there's motions
2 and time has been excluded, so I don't think it's a speedy trial
3 clock problem.

4 MR. PANZER: Well, it would be because I think as of
5 last time I haven't consented to speedy trial grounds.

6 MS. POKORNY: But counsel is making pretrial motions.

7 MR. PANZER: Okay. Well, I can make my motions by
8 March 26th they have to be in.

9 THE COURT: Anything else from anybody? When are you
10 available to try the case, Mr. Epstein?

11 MR. EPSTEIN: My commitment right now is March 14th in
12 front of Judge Hellerstein for two weeks. And then I'm
13 scheduled to go on vacation the end of August through the first
14 two weeks in September. But other than that, I'm free to do it
15 any time during the summer or thereafter.

16 THE COURT: How long is this March 14th trial?

17 MR. EPSTEIN: Two weeks.

18 MS. POKORNY: Do you mean May?

19 THE COURT: You said May earlier.

20 MR. EPSTEIN: May 14th. I apologize.

21 THE COURT: Who is that case before?

22 MR. EPSTEIN: Judge Hellerstein.

23 THE COURT: It's definitely going, as much as you can
24 tell right now?

25 MR. EPSTEIN: It's hard to predict. I'm hoping to

1 resolve it, but right now it's getting pretty close and it
2 hasn't been resolved yet.

3 THE COURT: Well, if it's resolved, what's in the way
4 of you going to trial in this case on May 21st?

5 MR. EPSTEIN: Nothing.

6 THE COURT: All right. Anything further by anybody?

7 MR. SHARGEL: The only other thing I want to say is
8 if --

9 MR. EPSTEIN: Let me just amend that. I haven't
10 received discovery yet, but I don't know if there's anything
11 surprising that will occur that will require me to apply to the
12 Court for a different trial date. Other than the fact I don't
13 have discovery, as things stand, all other things being equal, I
14 could certainly be on trial at that time.

15 THE COURT: All right.

16 MR. SHARGEL: In a somewhat related vein, in light of
17 this expedited schedule, I ask that we have a discovery
18 deadline. I know that Mr. Kaminsky told me that -- he's been
19 responsible for discovery all along, but if we could have a
20 deadline so we know exactly when we'd have it vis-a-vis the
21 motions. So if the motions are due on March 26th, if we could
22 have discovery in the next week, that would be good.

23 THE COURT: What discovery is there that hasn't already
24 been made?

25 MR. EPSTEIN: Judge, I haven't received anything.

1 THE COURT: I'm really asking the government.

2 MR. EPSTEIN: Oh, I'm sorry.

3 MR. PANZER: I'm sorry.

4 MR. KAMINSKY: Your Honor, the government was engaged
5 in plea negotiations with both Mr. Rosemond and Mr. Bennett and
6 provided each side discovery with respect to their attorneys'
7 own defendants. What each are owed are the others particular
8 discovery, and they will have that within two or three days.

9 MR. SHARGEL: Very well.

10 MR. PANZER: All right.

11 THE COURT: Who is not present?

12 MR. KAMINSKY: Jason Williams, Your Honor,
13 Mr. Epstein's client.

14 THE COURT: Where is he?

15 THE COURTROOM DEPUTY: Judge, I got a call this
16 morning. He's sick. He refused to come.

17 THE COURT: Oh, okay. You referenced that earlier.
18 Well, he's sick. Where is your client?

19 He can't be present by phone? Is he in the MDC?

20 THE COURTROOM DEPUTY: He is in jail.

21 THE COURT: You can't arrange a phone call?

22 All right. Do we need to do this again, Mr. Epstein,
23 with you and your client, in your judgment?

24 MR. EPSTEIN: I don't think so. I don't think he would
25 have anything to add.

1 THE COURT: Let's set something up with them. I want
2 to see them next week, Ilene, please. You have a date and a
3 time?

4 MR. KAMINSKY: Your Honor, the government's in trial
5 Wednesday, Thursday, Friday, but Monday -- and jury selection
6 Tuesday, so we'd prefer Monday we'll both be available to be
7 here.

8 MR. EPSTEIN: I'm not back yet this coming -- right
9 after this weekend?

10 MR. KAMINSKY: Yes.

11 MR. EPSTEIN: I'm back Wednesday night, Judge. I'm in
12 court Thursday morning on another case and Friday. I'm actually
13 in your district on Friday but with another case. I think I'm
14 in front of Judge Irizarry Friday morning.

15 MR. KAMINSKY: We're only a half week so we're sitting
16 this -- yes.

17 THE COURT: How late do you go? Is there going to be
18 someone else assigned to the case anyway by then?

19 MR. KAMINSKY: We hope.

20 THE COURT: It's ten weeks away.

21 MR. KAMINSKY: We hope so, Your Honor.

22 THE COURT: So let's put it down for late in the day
23 Friday at 4:30. That's just for Jason Williams and Mr. Epstein.

24 Now, the government's application to adjourn the trial
25 date is denied. What else, if anything?

1 MR. PANZER: We're trying to have a codefendant
2 meeting, but the problem is the individuals are in two different
3 prisons. One's in Queens and one is in MDC. I wonder if the
4 Court could help us with that.

5 THE COURT: By doing what?

6 MR. PANZER: One of the ways I think would be have them
7 brought here on a certain date and the marshals provide a
8 facility where we can meet. That would be the easy way to do
9 it. Unless Mr. Shargel has an objection.

10 MR. SHARGEL: Well, that's certainly the easiest way to
11 do it.

12 THE COURT: That makes sense. You want to be heard?

13 MS. POKORNY: No.

14 THE COURT: All right.

15 MR. SHARGEL: Submit an order?

16 THE COURT: Well, I think I can figure out an
17 appropriate order.

18 MR. PANZER: We're thinking next Wednesday.

19 THE COURT: Let me make sure. The marshals have their
20 own personnel power concerns. Let me make sure it's a date and
21 time we're not overly inconveniencing them.

22 The time you want is Wednesday. What time?

23 MR. PANZER: I'd say we start about 11 o'clock or
24 10 o'clock. Whatever is convenient to the marshals.

25 THE COURT: See if they can arrange a meeting room

1 downstairs.

2 MR. SHARGEL: It may be more convenient to the
3 marshals, and I know it would be more convenient for me because
4 I have something on in the morning, if we can do it at
5 2 o'clock.

6 MR. PANZER: Okay.

7 THE COURT: All right. I'll confer with them, and I'll
8 upload an order provided it's not inconvenient with them. If it
9 is inconvenient with them, we'll figure out a date and time that
10 works.

11 MR. PANZER: Thank you, Your Honor.

12 THE COURT: Anything else?

13 MR. SHARGEL: No, sir.

14 MR. KAMINSKY: Nothing from the government, Your
15 Honor.

16 THE COURT: Thank you. Have a good day.

17 MR. EPSTEIN: Thank you, Judge.

18 (Time noted: 2:31 p.m.)

19 (Proceedings were adjourned)

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